

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 123 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

MULJI GORDHANDAS

Appearance:

MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 12/11/98

ORAL JUDGEMENT

1. The assessee Shri Mulji Gordhandas, Morvi, was a partner in the firm M/s. Hansraj Keshavji of Morvi representing his Hindu Undivided Family. The three minor sons of assessee, namely, Rajesh, Munesh and Suresh were admitted to benefit of partnership firm. Assessee had

been assessed in respect of his share of profit from the firm in the status of Hindu undivided family. He had not filed any return in his status as individual, as he has no taxable income. The Income Tax Officer issued notice under Section 148 requiring the assessee to file a return in his individual capacity which was returned as nil. Applying Section 64, the shares allotted to minor sons of assessee, who were admitted to the benefit of partnership, in the firm in which he was also a partner representing Hindu undivided family were assessed as income of assessee in his individual capacity. This order on appeal was not sustained by Asst. Appellate Commissioner holding that since Section 64 applies only in case of an individual and not in case of a person becoming partner in his status as karta of Hindu Undivided Family, exigency for operating of Section 64 in the present case did not arise. As assessee was a partner in the firm, representing his Hindu undivided family and not in his individual capacity, it was not a case where income arose directly or indirectly to the spouse of an individual from the share in the firm as its partner or by admission of the minor to the benefits of partnership in a firm in which such individual was a partner. It was a case where income had arisen to minor children of a person who was partner in the firm representing his Hindu undivided family and not in his individual capacity, the two being separate entities for the purpose of Income Tax Act. In arriving at this decision, learned Appellate Asst. Commissioner has followed the decision of this court in Dinubhai Ishvarlal Patel v. K.D.Dixit, Income-Tax Officer, Ahmedabad and Others (1979) 118 ITR 122. The Tribunal affirmed the order of Asst. Appellate Commissioner. At the instance of Revenue on an application being made under Section 256(1), the Tribunal has referred following question of law arising out of its order in three Income Tax Appeals Nos. 984, 985 and 986 of 1982 relating to assessment years 1971-72, 1972-73 and 1973-74 :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that income of the minor sons of the assessee from the firm of M/s.Hansraj Keshvji, Morvi in which he was a partner representing his H.U.F. was not liable to be included in the individual income of the assessee?"

2. The issue is now concluded by decision of the Supreme Court in Commissioner of Income-Tax and Others v. Shri Om Prakash and Others (1996) 217 ITR 785.

The Court explained :

"A Hindu undivided family is itself an assessable entity or unit. The income earned by the karta is taxed in the hands of the Hindu undivided family. No part of such income is computed in his individual assessment. When section 64 speaks of 'computation of the total income of any individual', it ex hypothesi excludes from such computations, income which is assessable in the hands of the Hindu undivided family. Section 64 does not deal with the share income of the karta from the firm. It is confined to the clubbing together of the share income of the spouse or minor children of the individual from the firm, with such other income of that individual which is assessable in his individual status. It is thus clear that the share income of the karta from the partnership-firm is not exigible to tax a second time under Section 64."

The Court further held:

"So far as other partners in the partnership firm are concerned, they are not really concerned in what capacity a particular person is a partner, i.e., whether as an individual, as a karta, as a trustee or otherwise. To them, he is an individual, a person. This aspect, however, becomes relevant as between the partner and those whom he represents in the partnership firm. To wit, where a person is a partner as the karta of a Hindu undivided family, the capacity in which he is a partner in the partnership firm is relevant as between him and the other members of the Hindu undivided family. For, the income the karta receives as a partner is not his individual income; it is the income of the Hindu undivided family and he receives it on behalf of the Hindu undivided family. It is for this reason that the income of the wife and minor children arising from their membership/admission to the benefits of the partnership firm, is held not includible in the income of the Hindu undivided family, since the total income of the Hindu undivided family is not the total income of the individual (husband or father, as the case may be). For section 64(1) to get attracted, it is necessary that the husband/father should be a partner in a partnership as an individual, i.e. in his individual capacity. It is not attracted where

he is a partner as the karta of Hindu undivided family to which such wife and/or minor children belong. This is the holding of the decisions of this court in L. Hirday Narain's case (1970) 78 ITR 26; Harbhajan Lal's case (1993) 204 ITR 361 and Jayantilal Prem Chand Shah's case (1995) 211 ITR 111. It may not be quite apt to say that vis-a-vis the members of the Hindu undivided family, the karta is still an individual and, therefore, such income of wife and minor children should be included in the income of the karta derived as karta. Nor are we satisfied that such income of the wife and/or minor children should be included in the individual assessment of the karta"

3. In view of the aforesaid declaration of law, the question referred above is answered in affirmative, that is to say, in favour of the Assessee and against the Revenue.

There shall be no order as to costs.

(RAJESH BALIA, J)

(A.R.DAVE, J)

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